

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES**  
**Agency With Choice Provider**  
**ISSUED BY THE DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES**  
**CONTRACT NUMBER HSS17025**

**I. Overview**

The State of Delaware Division of Developmental Disabilities Services (DDDS), Department of Health and Social Services (DHSS) seeks professional services to deliver fiscal management and related services to support a self-directed option under the DDDS Lifespan Medicaid Home and Community Based Services (HCBS) Waiver. The model of self-direction is called "Agency With Choice". This request for proposals ("RFP") is issued pursuant to 29 Del. C. §§ [6981 and 6982](#).

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: August 1, 2017
Deadline for Questions	Date: August 15, 2017
Response to Questions Posted by:	Date: August 29, 2017
Deadline for Receipt of Proposals	Date: September 12, 2017 at 11:00 AM (Local Time)
Estimated Notification of Award	Date: September 22, 2017

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3).

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the Vendor shall not store or transfer non-public State of Delaware data outside of the United States. For technology related solicitations, Vendors may refer to the Delaware Department of Technology and Information identified terms and conditions included in this solicitation.

The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

**MANDATORY PREBID MEETING**

A mandatory pre-bid meeting has not been established for this Request for Proposal.

**II. Scope of Services**

The project's scope of services can be found under **APPENDIX B** of this RFP.

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**III. Required Information**

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

**A. Minimum Requirements**

1. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.

Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.

2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.
3. Complete all appropriate attachments and forms as identified within the RFP.
4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation, Section D, Item 7, subsection g (insurance).
5. The Vendor must attest that it has not been excluded from participation from Medicaid or Medicare as evidenced by its presence on the OIG Exclusions list or has not been terminated from participation under the Medicare program or the Medicaid program of another state for cause (Affordable Care Act Section 6501).

**General Evaluation Requirements**

1. Experience and Reputation
2. Expertise (for the particular project under consideration)
3. Capacity to meet requirements (size, financial condition, etc.)
4. Location (geographical)
5. Demonstrated ability
6. Familiarity with public work and its requirements

**IV. Professional Services RFP Administrative Information**

**A. RFP Issuance**

**1. Public Notice**

Public notice has been provided in accordance with 29 *Del. C.* [§6981](#).

**2. Obtaining Copies of the RFP**

This RFP is available in electronic form through the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov) . Paper copies of this RFP will not be available.

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**3. Assistance to Vendors with a Disability**

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

**4. RFP Designated Contact**

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact:

**Stacy Watkins, Manager of DDDS Lifespan Unit**

**Stacy.Watkins@state.de.us**

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

**5. Consultants and Legal Counsel**

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact the State's consultant or legal counsel on any matter related to the RFP.

**6. Contact with State Employees**

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

**7. Organizations Ineligible to Bid**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

**8. Exclusions**

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract:
- b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or

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- other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor:
- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
  - d. Has violated contract provisions such as;
    - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
  - e. Has violated ethical standards set out in law or regulation; and
  - f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

**B. RFP Submissions**

**1. Acknowledgement of Understanding of Terms**

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

**2. Proposals**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with four (4) paper copies and four (4) electronic copies on CD or DVD media disk, or USB memory drive. Please provide a separate electronic pricing file from the rest of the RFP proposal responses.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **11:00 AM (Local Time) on September 12, 2017**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Kimberly Jones**

**DELAWARE HEALTH AND SOCIAL SERVICES**

**PROCUREMENT BRANCH**

**MAIN ADMIN, SULLIVAN STREET**

**2<sup>ND</sup> FLOOR-ROOM 257**

**1901 NORTH DUPONT HIGHWAY**

**HERMAN HOLLOWAY SR. HEALTH AND SOCIAL SERVICES CAMPUS**

**NEW CASTLE, DE 19720**

**PHONE: (302) 255-9291**

**Vendors are directed to clearly print “BID ENCLOSED” and “CONTRACT NO. HSS17025 on the outside of the bid submission package.**

Any proposal received after the Deadline for Receipt of Proposals date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of

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delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

**3. Proposal Modifications**

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

**4. Proposal Costs and Expenses**

The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.

**5. Proposal Expiration Date**

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through July 1, 2018. The State of Delaware reserves the right to ask for an extension of time if needed.

**6. Late Proposals**

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

**7. Proposal Opening**

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened in the presence of State of Delaware personnel. Any unopened proposals will be returned to the submitting Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposal.

The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

**8. Non-Conforming Proposals**

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware.

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**9. Concise Proposals**

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

**10. Realistic Proposals**

It is the expectation of the State of Delaware that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The State of Delaware shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

**11. Confidentiality of Documents**

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of the vendor's proposal will be treated as confidential during the evaluation process. As such, vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract unless such disclosure is required by law or by order of a court of competent jurisdiction.

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, [29 Del. C. § 10001, et seq. \("FOIA"\)](#). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. Once a proposal is received by the State of Delaware and a decision on contract award is made, the content of selected and non-selected vendor proposals will likely become subject to FOIA's public disclosure obligations.

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Proposals must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor's confidential business information may be lost.

In order to allow the State to assess its ability to protect a vendor's confidential business information, vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

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Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled “Confidential Business Information” and include the specific RFP number. The envelope must contain a letter from the Vendor’s legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not “public record” as defined by 29 Del. C. § 10002, and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed. A vendor’s allegation as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a proposal or using the procedures discussed herein expressly accepts the State’s absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a proposal may enter the public domain.

**12. Price Not Confidential**

Vendors shall be advised that as a publically bid contract, no Vendor shall retain the right to declare their pricing confidential.

**13. Multi-Vendor Solutions (Joint Ventures)**

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the “**prime contractor**”. The “**prime contractor**” must be the joint venture’s contact point for the State of Delaware and be responsible for the joint venture’s performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by the State of Delaware, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

**a. Primary Vendor**

The State of Delaware expects to negotiate and contract with only one “prime vendor”. The State of Delaware will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the awarded vendor.

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Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

**b. Sub-contracting**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by State of Delaware.

**c. Multiple Proposals**

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

**14. Sub-Contracting**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

**15. Discrepancies and Omissions**

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals.

**a. RFP Question and Answer Process**

The State of Delaware will allow written requests for clarification of the RFP. All questions shall be received no later than **August 15, 2017**. All questions will be consolidated into a single set of responses and posted on the State's website at



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[www.bids.delaware.gov](http://www.bids.delaware.gov) by the date of **August 29, 2017**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Questions not submitted electronically shall be accompanied by a CD and questions shall be formatted in Microsoft Word.

**16. State's Right to Reject Proposals**

The State of Delaware reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

**17. State's Right to Cancel Solicitation**

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

**18. State's Right to Award Multiple Source Contracting**

Pursuant to 29 *Del. C.* [§ 6986](#), the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

**19. Potential Contract Overlap**

Vendors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis

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item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

**20. Notification of Withdrawal of Proposal**

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

**21. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at [www.bids.delaware.gov](http://www.bids.delaware.gov). The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

**22. Exceptions to the RFP**

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee.

**23. Business References**

Provide at least three (3) business references consisting of current or previous customers of similar scope and value using Attachment 5. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered.

**24. Award of Contract**

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

**a. RFP Award Notifications**

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

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It should be explicitly noted that the State of Delaware is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with the State of Delaware; remaining vendors will be notified in writing of their selection status.

**25. Cooperatives**

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation.

**C. RFP Evaluation Process**

An evaluation team composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

The State of Delaware reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that the State of Delaware may deem necessary to make a decision.

**1. Proposal Evaluation Team**

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ [6981 and 6982](#). The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Division of Developmental Disabilities Services, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § [6982](#), to award a contract to the successful vendor in the best interests of the State of Delaware.

**2. Proposal Selection Criteria**

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

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Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.

**Criteria Weight**

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

<b>Criteria</b>	<b>Weight</b>
Familiarity and experience with Medicaid Home and Community-Based Services, specifically as related to providing Financial Management Services in self-direction programs.	25
Experience with the principles of person-centered philosophy and self determination	15
Experience serving individuals with intellectual and developmental disabilities	5
Cost Effectiveness of Budget Proposal	34
Experience serving as a Common Law Employer of workers recruited and referred for hire by program participants, and co-employing such workers with program participants in an AWC model of FMS.	20
ACA Safe Harbor Additional Fee	1
<b>Total</b>	<b>100%</b>
<b>Bidders must circle Yes or No to the following questions and include the answers in their response.</b>	
<b>1) Does the bidder have a Supplier Diversity plan currently in place?</b>	<b>Yes/No</b>
<b>2) Does the bidder have any diverse sub- contractors as outlined in</b>	<b>Yes/No</b>

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Criteria	Weight
Attachment 8 Tier II Sub-contractors?	
3) Does the bidder have a written inclusion policy in place? If yes, attach a clearly identifiable copy of the inclusion plan to your proposal.	Yes/No
Answers to these three criteria are mandatory and do not affect the weighted evaluation of this proposal. However, an affirmative answer to question 2 may directly impact quarterly sub-contracting reporting as illustrated in Attachment 8 in those instances where an awarded contract includes subcontracting activity	

Vendors are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a vendor's capabilities so the responding vendor should be detailed in their proposal responses.

**3. Proposal Clarification**

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

**4. References**

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

**5. Oral Presentations**

After initial scoring and a determination that vendor(s) are qualified to perform the required services, selected vendors may be invited to make oral presentations to the Evaluation Team. All vendor(s) selected will be given an opportunity to present to the Evaluation Team.

The selected vendors will have their presentations scored or ranked based on their ability to successfully meet the needs of the contract requirements, successfully demonstrate their product and/or service, and respond to questions about the solution capabilities.

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The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components. All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

**D. Contract Terms and Conditions**

**1. Contract Use by Other Agencies**

**REF: Title 29, Chapter 6904(e) Delaware Code.** If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

**2. Cooperative Use of Award**

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

**3. As a Service Subscription**

As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.

**4. General Information**

- a. The term of the contract between the successful bidder and the State shall be for two (2) year with three (3) optional extensions for a period of one (1) year for each extension.
- b. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
- c. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.

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- e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
- g. The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.

**5. Collusion or Fraud**

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

**6. Lobbying and Gratuities**

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

**7. Solicitation of State Employees**

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

**8. General Contract Terms**

**a. Independent Contractors**

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware may provide working space and sufficient supplies and material to augment the Contractor's services.

**b. Temporary Personnel are Not State Employees Unless and Until They are Hired**

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this



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Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Vendor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Vendor will waive any separation fee provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

**c. ACA Safe Harbor**

The State and its utilizing agencies are not the employer of temporary or contracted staff. However, the State is concerned that it could be determined to be a Common-law Employer as defined by the Affordable Care Act ("ACA"). Therefore, the State seeks to utilize the "Common-law Employer Safe Harbor Exception" under the ACA to transfer health benefit insurance requirements to the staffing company. The Common-law Employer Safe Harbor Exception can be attained when the State and/or its agencies are charged and pay for an "Additional Fee" with respect to the employees electing to obtain health coverage from the Vendor.

The Common-law Employer Safe Harbor Exception under the ACA requires that an Additional Fee must be charged to those employees who obtain health coverage from the Vendor, but does not state the required amount of the fee. The State requires that all Vendors shall identify the Additional Fee to obtain health coverage from the Vendor and delineate the Additional Fee from all other charges and fees. The Vendor shall identify both the Additional Fee to be charged and the basis of how the fee is applied (i.e. per employee, per invoice, etc.). The State will consider the Additional Fee and prior to award reserves the right to negotiate any fees offered by the Vendor. Further, the Additional Fee shall be separately scored in the proposal to ensure that neither prices charged nor the Additional Fee charged will have a detrimental effect when selecting vendor(s) for award.

**d. Licenses and Permits**

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C. § 2502*.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French

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Street, Wilmington, DE 19899 or by telephone to one of the following numbers:  
(302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

**e. Notice**

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

**Stacy Watkins,  
1056 S. Governor's Avenue, Suite 101  
Dover, DE 19904**

**[Stacy.Watkins@state.de.us](mailto:Stacy.Watkins@state.de.us)**

**f. Indemnification**

**1. General Indemnification**

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's, its agents and employees' performance work or services in connection with the contract.

**2. Proprietary Rights Indemnification**

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- a.** Procure the right for the State of Delaware to continue using the Product(s);
- b.** Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- c.** Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform

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to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

**g. Insurance**

1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
2. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.
3. During the term of this contract, the vendor shall, at its own expense, also carry insurance minimum limits as follows:
  - a. Vendor shall in all instances maintain the following insurance during the term of this Agreement.
    - i. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
    - ii. Commercial General Liability  
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate.
  - b. The successful vendor must carry at least one of the following depending on the scope of work being delivered.
    - i. Medical/Professional Liability  
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate
    - ii. Miscellaneous Errors and Omissions  
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate
    - iii. Product Liability  
\$1,000,000 per occurrence/\$3,000,000 aggregate
  - c. If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage's, secure at its own expense the following coverage.
    - i. Automotive Liability Insurance (Bodily Injury) covering all automotive units transporting departmental clients or staff used in the work with limits of not less than \$100,000 each person and \$300,000 each accident.
    - ii. Automotive Property Damage (to others) - \$25,000

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4. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided prior to agency contact prior to any work being completed by the awarded vendor(s).
5. The State of Delaware shall not be named as an additional insured.
6. Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

**h. Performance Requirements**

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

**i. BID BOND**

**There is no Bid Bond Requirement.**

**j. PERFORMANCE BOND**

**There is no Performance Bond requirement.**

**k. Vendor Emergency Response Point of Contact**

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

**l. Warranty**

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.

**m. Costs and Payment Schedules**

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

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The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

**n. Penalties**

The State of Delaware may include in the final contract penalty provisions for non-performance, such as liquidated damages.

**o. Dispute Resolution**

At the option of, and in the manner prescribed by the Office of Management and Budget (OMB), the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, OMB elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by OMB, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of OMB, to the Office of Management and Budget, Government Support Services Director, for final and binding arbitration. OMB reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

**p. Termination of Contract**

The contract resulting from this RFP may be terminated as follows by **The Division of Developmental Disabilities Services**.

**1. Termination for Cause**

If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps,

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models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

**2. Termination for Convenience**

The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

**3. Termination for Non-Appropriations**

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

**q. Non-discrimination**

In performing the services subject to this RFP the vendor, as set forth in Title 19 Delaware Code Chapter 7 section [711](#), will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

**r. Covenant against Contingent Fees**

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling

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agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**s. Vendor Activity**

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

**t. Vendor Responsibility**

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of **The Division of Developmental Disabilities Services**.

**u. Personnel, Equipment and Services**

1. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
2. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.
3. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those subcontractors identified in Attachment 6 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 6 must be approved in writing by the State.

**v. Fair Background Check Practices**

Pursuant to 29 Del. C. [§6909B](#), the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. [§711\(g\)](#) for applicable established provisions.

**w. Vendor Background Check Requirements**

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at:  
<https://sexoffender.dsp.delaware.gov/>

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Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract, but may provide support or off-site premises service for contract vendors. Should an individual be identified and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Vendor(s) shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Vendor to penalty, including contract cancellation for cause.

Individual contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

**x. Work Product**

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract.

**y. Contract Documents**

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall constitute the contract between the State of Delaware and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.

**z. Applicable Law**

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

1. the laws of the State of Delaware;
2. the applicable portion of the Federal Civil Rights Act of 1964;
3. the Equal Employment Opportunity Act and the regulations issued there under by the federal government;



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4. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
5. that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (1) through (5) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

**aa. Severability**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**bb. Assignment Of Antitrust Claims**

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

**cc. Scope of Agreement**

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

**dd. Affirmation**

The Vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

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**ee. Audit Access to Records**

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

**ff. Other General Conditions**

1. **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
2. **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer's latest design. All material and equipment offered shall be new and unused.
3. **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
4. **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
5. **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
6. **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
7. **Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
8. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
9. **Billing** – The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.
10. **Payment** – The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and

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process for payment of each invoice within thirty (30) days after the date of receipt of a correct invoice. Vendors are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.

- 11. Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **HSS17025** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 12. Purchase Card** – The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 13. Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

**E. RFP Miscellaneous Information**

**1. No Press Releases or Public Disclosure**

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

The State will not prohibit or otherwise prevent the awarded vendor(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Vendor shall not use the State's seal or imply preference for the solution or goods provided.

**2. Definitions of Requirements**

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

**3. Production Environment Requirements**

The State of Delaware requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

**F. Attachments**

The following attachments and appendixes shall be considered part of the solicitation:

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- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Monthly Usage Report
- Attachment 8 – Subcontracting (2<sup>nd</sup> Tier Spend) Report
- Attachment 9 – Office of Supplier Diversity Application
- Appendix A – Minimum Response Requirements
- Appendix B – Scope of Work / Technical Requirements

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**IMPORTANT – PLEASE NOTE**

- **Attachments 2, 3, 4, and 5 must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved
- Attachments 7 and 8 represent required reporting on the part of awarded vendors. Those bidders receiving an award will be provided with active spreadsheets for reporting.

**REQUIRED REPORTING**

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Attachment 7) shall be furnished in an **Excel format and submitted electronically**, no later than the 15<sup>th</sup> (or next business day after the 15<sup>th</sup> day) of each month, detailing the purchasing of all items on this contract. The reports shall be submitted and sent as an attachment to **The Division of Developmental Disabilities Services**. Submitted reports shall contain accurate descriptions of the products, goods or services procured, purchasing agency information, including the six-digit department and organization code, quantities procured and prices paid. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2<sup>nd</sup> Tier report is shown as in Attachment 8.

Accurate 2nd tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at [vendorusage@state.de.us](mailto:vendorusage@state.de.us) on the 15<sup>th</sup> (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

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**Attachment 1**

**NO PROPOSAL REPLY FORM**

Contract No. **HSS17025**

Contract Title: Agency with Choice Provider

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

- \_\_\_\_\_ 1. We do not wish to participate in the proposal process.
- \_\_\_\_\_ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document.  
Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 3. We do not feel we can be competitive.
- \_\_\_\_\_ 4. We cannot submit a Proposal because of the marketing or franchising policies of the  
manufacturing company.
- \_\_\_\_\_ 5. We do not wish to sell to the State. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 6. We do not sell the items/services on which Proposals are requested.
- \_\_\_\_\_ 7. Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_ We wish to remain on the Vendor's List **for these goods or services.**

\_\_\_\_\_ We wish to be deleted from the Vendor's List **for these goods or services.**

**PLEASE FORWARD NO PROPOSAL REPLY FORM TO THE CONTRACT OFFICER IDENTIFIED.**

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**Attachment 2**

**CONTRACT NO.: HSS17025**

**CONTRACT TITLE: Agency With Choice Provider**

**DEADLINE TO RESPOND: September 12, 2017 at 11:00 AM (Local Time)**

**NON-COLLUSION STATEMENT**

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, The Division of Developmental Disabilities Services.

It is agreed by the undersigned Vendor that the signed delivery of this bid represents, subject to any express exceptions set forth at Attachment 3, the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

**NOTE:** Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, The Division of Developmental Disabilities Services.

COMPANY NAME \_\_\_\_\_ Check one)  
NAME OF AUTHORIZED REPRESENTATIVE  
(Please type or print) \_\_\_\_\_

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

COMPANY ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

FEDERAL E.I. NUMBER \_\_\_\_\_ STATE OF DELAWARE  
LICENSE NUMBER \_\_\_\_\_

COMPANY CLASSIFICATIONS:  CERT. NO.:	Certification type(s)	Circle all that apply	
	Minority Business Enterprise (MBE)	Yes	No
	Woman Business Enterprise (WBE)	Yes	No
	Disadvantaged Business Enterprise (DBE)	Yes	No
	Veteran Owned Business Enterprise (VOBE)	Yes	No
	Service Disabled Veteran Owned Business Enterprise (SDVOBE)	Yes	No

[The above table is for informational and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO:

(COMPANY NAME) \_\_\_\_\_

ADDRESS \_\_\_\_\_

CONTACT \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

**AFFIRMATION:** Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES \_\_\_\_\_ NO \_\_\_\_\_ if yes, please explain \_\_\_\_\_

**THIS PAGE SHALL HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL**

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_





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**Attachment 4**

Contract No. **HSS17025** Contract Title: Agency With Choice Provider

**CONFIDENTIAL INFORMATION FORM**

☐ By checking this box, the Vendor acknowledges that they are not providing any information they declare to be confidential or proprietary for the purpose of production under 29 Del. C. ch. 100, Delaware Freedom of Information Act.

<b>Confidentiality and Proprietary Information</b>

**Note:** Vendor may use additional pages as necessary, but the format shall be the same as provided above.

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**Attachment 5**

Contract No. **HSS17025**  
Contract Title: Agency With Choice Provider

**BUSINESS REFERENCES**

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please provide a separate list of the contract(s).

1. **Contact Name & Title:**

**Business Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of  
Work Performed:**


2. **Contact Name & Title:**

**Business Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of  
Work Performed:**


3. **Contact Name & Title:**

**Business Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of  
Work Performed:**


**STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.**





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Attachment 8

**SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY**

<b>State of Delaware</b>																
<b>Subcontracting (2nd tier) Quarterly Report</b>																
Prime Name:							Report Start Date:									
Contract Name/Number							Report End Date:									
Contact Name:							Today's Date:									
Contact Phone:							*Minimum Required		Requested detail							
Vendor Name*	Vendor TaxID*	Contract Name/ Number*	Vendor Contact Name*	Vendor Contact Phone*	Report Start Date*	Report End Date*	Amount Paid to Subcontractor*	Work Performed by Subcontractor UNSPSC	M/WBE Certifying Agency	Veteran /Service Disabled Veteran Certifying Agency	2nd tier Supplier Name	2nd tier Supplier Address	2nd tier Supplier Phone Number	2nd tier Supplier email	Description of Work Performed	2nd tier Supplier Tax Id

**Note:** A copy of the Subcontracting Quarterly Report will be sent by electronic mail to the Awarded Vendor.

Completed reports shall be saved in an Excel format, and submitted to the following email address: [vendorusage@state.de.us](mailto:vendorusage@state.de.us)

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Attachment 9

**State of Delaware**  
**Office of Supplier Diversity**  
**Certification Application**

The most recent application can be downloaded from the following site:

<http://gss.omb.delaware.gov/osd/certify.shtml>

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

The minimum criteria for certification require the entity must be at least 51% owned and actively managed by a person or persons who are eligible: minorities, women, veterans, and/or service disabled veterans. Any one or all of these categories may apply to a 51% owner.



**Complete application and mail, email or fax to:**

Office of Supplier Diversity (OSD)  
100 Enterprise Place, Suite 4  
Dover, DE 19904-8202  
Telephone: (302) 857-4554 Fax: (302) 677-7086  
Email: [osd@state.de.us](mailto:osd@state.de.us)  
Web site: <http://gss.omb.delaware.gov/osd/index.shtml>

**THE OSD ADDRESS IS FOR OSD APPLICATIONS ONLY.**  
**THE OSD WILL NOT ACCEPT ANY VENDOR BID RESPONSE PACKAGES.**  
**AGENCY MAY REMOVE THIS PAGE IN ITS ENTIRETY IF NO BOND IS REQUIRED**

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**APPENDIX A**

**MINIMUM MANDATORY SUBMISSION REQUIREMENTS**

Each vendor solicitation response should contain at a minimum the following information:

1. Transmittal Letter as specified on page 1 of the Request for Proposal including an Applicant's experience, if any, providing similar services.
2. The remaining vendor proposal package shall identify how the vendor proposes meeting the contract requirements and shall include pricing. Vendors are encouraged to review the Evaluation criteria identified to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria listed. Vendors are encouraged to address each requirement in Appendix B in their response in the order in which they appear in Appendix B and to clearly label each section to make it easier for the reviewers to evaluate the proposal against the requirements.
3. Pricing as identified in the solicitation
4. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment 2). Bid marked "ORIGINAL", **MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK.** All other copies may have reproduced or copied signatures – Form must be included.
5. One (1) completed RFP Exception form (See Attachment 3) – please check box if no information – Form must be included.
6. One (1) completed Confidentiality Form (See Attachment 4) – please check if no information is deemed confidential – Form must be included.
7. One (1) completed Business Reference form (See Attachment 5) – please provide references other than State of Delaware contacts – Form must be included.
8. One (1) complete and signed copy of the Subcontractor Information Form (See Attachment 6) for each subcontractor – only provide if applicable.
9. One (1) complete OSD application (See link on Attachment 9) – only provide if applicable

The items listed above provide the basis for evaluating each vendor's proposal. **Failure to provide all appropriate information may deem the submitting vendor as "non-responsive" and exclude the vendor from further consideration.** If an item listed above is not applicable to your company or proposal, please make note in your submission package.

Vendors shall provide proposal packages in the following formats:

1. **Four (4) paper copies of the vendor proposal paperwork. One (1) paper copy must be an original copy, marked "ORIGINAL" on the cover, and contain original signatures.**
2. **Four (4) electronic copy of the vendor proposal saved to CD or DVD media disk, or USB memory stick. Copy of electronic price file shall be a separate file from all other files on the electronic**

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3. copy. (If Agency has requested multiple electronic copies, each electronic copy must be on a separate computer disk or media).

**APPENDIX B**

**SCOPE OF WORK AND TECHNICAL REQUIREMENTS**

**TECHNICAL REQUIREMENTS**

The State of Delaware Division of Developmental Disabilities Services hereafter referred to as DDDS or “the Division”, seeks an agency to perform professional services known as Financial Management Services (FMS), using the Agency with Choice (AWC) model, for individuals with intellectual and developmental disabilities who are living at home with their families. The entity who will deliver AWC will be called the Agency with Choice Provider, who will serve as the Common Law Employer. The Agency with Choice Provider will be responsible for providing Financial Management Services to participants and/or the participant’s representative who choose self-directed supports for personal care and respite services.

The Department will evaluate the Bidder’s qualifications related to the following:

1. Experience with Medicaid Home and Community-Based Services, specifically as related to providing Financial Management Services in self-direction programs.
2. Experience with the principles of person-centered philosophy and self-determination.
3. Experience serving individuals with intellectual and developmental disabilities.
4. Experience serving as a Common Law Employer of workers recruited and referred for hire by program participants, and co-employing such workers with program participants in an Agency with Choice model of Financial Management Services.
5. Cost Effectiveness of Proposed Budget.

To demonstrate its qualifications, the Bidder must provide a list of at least one but no more than three self-direction programs for which it has provided Financial Management Services in the past. The list must include the following information for each program:

1. Name of program and geographic area served (e.g., a state or county);
2. Number of program participants currently served by the Bidder;
3. Characteristics of the program participants served;
4. Years Bidder has spent offering Financial Management Services in the program;
5. Model of Financial Management Services (e.g, Agency with Choice, Bidder Fiscal/Employer Agent, Government Fiscal/Employer Agent) used in the program; and
6. One program reference & letter of recommendation for each program listed. This reference must include the reference’s name, title, department, phone number, and email address.



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7. The full policy and procedure manual used by the Bidder for the program, including all policies, procedures, and internal controls.

The Bidder shall describe its ability to meet each of the following criteria:

**1. Employer Requirements**

1. Ensure all Bidder staff members receive training on person-centered philosophy and the philosophy of self-direction.
2. Serve as the Common Law Employer for all employees who provide services to participants. This shall include the following:
  - a. Assist any participant or participant's representative with recruiting workers if they are unable or unwilling to recruit, select, and refer a worker for hire to the agency.
  - b. Interview all potential workers referred to the agency for hire.
  - c. Provide information to participants on how to be effective co-employers (e.g., managing employees successfully, communicating clearly to employees about job performance expectations, etc.) Participants and participants' representatives should be given primary control over worker recruitment and selection as well as managing, scheduling, supervising, and terminating workers. However, the Agency with Choice may assist the participant with these tasks at the participant's request.
  - d. As necessary, ensure any workers who fail to provide satisfactory services or have proven to be a poor fit for a particular participant are terminated from that co-employment relationship and no longer provide services to that particular participant. (Depending on the reason for the termination, workers may be formally discharged from the Agency with Choice, or re-assigned to another participant with the participant or participant's representative's consent.)
  - e. Provide Managing Employer packet to participant or participant's authorized representative that includes:
    - i. HIPAA Notice of Privacy Practices;
    - ii. Participant Agreement, provided by the Division, that details the roles and responsibilities of the participant, participant's representative (if applicable), and Agency with Choice;
    - iii. The Bidder's customer service contact information.
    - iv. Information on recruiting workers and how the Bidder may assist the participant or participant's representative with worker recruitment and training.
    - v. Any other forms or information requested by the State of Delaware.
  - f. Other employer duties as required by DDDS.
3. Provide all employees with an employee packet that includes, at minimum:
  - a. IRS W-4, *Employee's Withholding Allowance Certificate*;

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- b. USCIS Form I-9, *Employment Eligibility Verification*;
  - c. DE State Income Tax Withholding Certificate;
  - d. Employment contract that includes the employee's rate(s) of pay, to be signed by the employee and the Agency with Choice;
  - e. Authorization for criminal background checks;
  - f. A document detailing the roles and responsibilities of the Agency with Choice and of the participant or participant's representative;
  - g. Guidelines for proper completion of timesheets;
  - h. Payday schedules and associated timesheet submission deadlines;
  - i. Other forms as requested by the State of Delaware.
- 4. Ensure that all required forms have been properly completed and returned to Bidder prior to employee providing service to participant(s).
  - 5. If employee paperwork is not completed properly and information is missing and/or requires correction, return paperwork to employee with instructions for proper completion.
  - 6. Check all prospective employees', vendors', and independent contractors' Taxpayer Identification Numbers against the Office of Inspector General's List of Excluded Individuals and Entities (LEIE) prior to hire to ensure they are eligible to participate in the program.
  - 7. Conduct all required criminal background checks, including the Adult Abuse Registry, Sex Offender Registry, Child Protection Registry, Division of Professional Regulation Registry (as applicable), and State and Federal Criminal Background Checks.
  - 8. Submit for background check results within three (3) business days of receiving a properly completed background check authorization from employee.
  - 9. Notify employee and participant (and participant's representative if applicable) that employee can begin service within three (3) days of all employee and participant enrollment information being complete, including acceptable background checks on record.
  - 10. Report newly hired employees to the State of Delaware per state new hire reporting requirements.
  - 11. Maintain a list of all employees indicating by which DDDS consumer(s) they are employed and provide the list to DDDS upon request.
  - 12. Train newly hired employees on CPR and first aid techniques to protect participant health and safety.
  - 13. Provide all vendors and independent contractors with a vendor packet that includes, at minimum:
    - a. IRS Form W-9, *Request for Taxpayer Identification Number*;
    - b. Background check authorization(s), as applicable;
    - c. Any other forms or information requested by the State of Delaware.
  - 14. Obtain and maintain workers' compensation coverage in accordance with State of Delaware requirements.
  - 15. Use IRS Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* to receive a formal IRS determination if the Vendor is unable to determine a worker's correct classification as an employee or independent contractor.

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16. If Bidder qualifies as an Applicable Large Employer (ALE) under the Affordable Care Act, provide plan to comply with the Affordable Care Act's requirement to provide health insurance to employees who work at least 30 hours in a workweek.
17. Document and report any instance of suspected fraud, waste, or abuse to the State of Delaware for investigation.
18. Have documented policies, procedures, and internal controls for all tasks set forth in Section 1.

## 2. Budget Management Requirements

1. Initiate the participant enrollment process once a participant's authorization is received. Authorization information will be received electronically via a program-wide electronic case record system that the vendor is required to use. Authorization information will be sent to the Agency with Choice after a participant's person-centered plan has been developed in consultation with the participant's Community Navigator and finalized.
2. Provide information to participants and participants' representatives about how to use their authorization in a responsible and sustainable manner.
3. Track all participant expenditures against the participant's authorization.
4. Provide regular utilization reports to participant and/or participant's representative on a monthly basis, until the allotment cap is reached, showing the amount spent and the amount remaining in the authorization period.
5. Provide regular utilization reports to participant's Community Navigator on a monthly basis, until the allotment cap is reached, showing the amount spent by the participant or participant's representatives and the amount remaining in the authorization period.
6. Track worker hours and pay overtime as needed to any worker who works over 40 hours in a workweek, regardless of the number of participants served by the worker.
  - a. **Note:** If a worker travels and this travel is compensable under FLSA requirements, the worker's payment may be paid out of a participant's authorization if the participant has authorized the travel. If a worker travels and this travel is compensable under FLSA requirements, the worker's payment may not be paid out of a participant's authorization if the participant has not authorized the travel. (E.g., the worker finished a shift at one participant's home and subsequently traveled to another participant's home to begin a new shift.) Such travel, if and when it occurs, must be paid by the Vendor.
7. Offer an electronic timesheet option for participants who choose to review and approve worker time electronically.
8. Develop a paper timesheet that is easy to use for program participants and workers who are not able to use the electronic timesheet, and require that all timesheets be signed and approved by the managing employer prior to being approved for payment.

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9. If participant's spending pattern indicates the participant is on track to over utilize his or her authorization, contact the participant's Community Navigator within two business days to refer the participant for follow-up training, a re-assessment, or other corrective measure.
10. Allow program participants to fax or mail paper timesheets.
11. Only allow timesheets that have been approved by both the worker and managing employer and that show expenditures in accordance with the participant's authorization to move forward for payment.
12. Retain records of all approved expenditures for a minimum of seven years.
13. Describe plan to comply with Section 12006 of the 21<sup>st</sup> Century Cures Act, which concerns verifying the delivery of Medicaid-funded personal care services via an Electronic Visit Verification (EVV) system.
14. Have documented policies, procedures, and internal controls for all tasks set forth in Section 2.

### **3. Payroll & Tax Reporting Requirements**

1. Issue paychecks for program workers on a biweekly basis and withhold and pay all applicable federal and state taxes, including Federal Income Tax, FICA (Social Security/Medicare), and Delaware State Income Tax, as well as any garnishments, liens, and levies.
2. Comply with Delaware minimum wage requirements by ensuring each worker is paid at least state minimum wage.
3. Comply with the Fair Labor Standards Act (FLSA), the FLSA Home Care Final Rule, and Delaware labor law by ensuring overtime is paid to employees who work over 40 hours in a workweek, and that employees are paid wages in circumstances in which their travel is considered compensable under the FLSA.
4. Ensure compensable travel that was not authorized or controlled by a participant (e.g., travel from one participant's home to another during a single work day) is not paid out of a participant budget.
5. File and deposit employer taxes, including FUTA, SUTA, and the employer share of FICA (Social Security/Medicare) taxes per Internal Revenue Service and State of Delaware mandated timelines, and maintain documentation of all such deposits.
6. Offer a direct deposit option to all employees who provide services to participants.
7. Issue Forms W-2 to all employees at year-end and file all Forms W-2 and Form W-3 timely with the Internal Revenue Service.
8. Issue Forms 1099-MISC to all non-employee vendors and independent contractors at year-end, and file Forms 1099-MISC timely with the Internal Revenue Service.
9. File Form 941, *Employer's Quarterly Tax Return*, on a quarterly basis with the Internal Revenue Service.
10. File Form 940, *Employer's Annual Federal Unemployment Tax (FUTA) Tax Return*, on an annual basis with the Internal Revenue Service.

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11. Maintain records of all tax withholding and payments made on behalf of workers providing services to program participants for a minimum of 7 years.
12. Have a documented procedure in place for remaining up-to-date with all applicable federal and state rules and regulations that affect the Vendor's responsibilities as set forth in the Contract.
13. If Bidder plans to use a reporting agent to execute any of the tasks described in this Section, the following information must be provided:
  - a. The name of the reporting agent;
  - b. The name, phone number, mailing address, and email address of the reporting agent's primary contact.
  - c. The payroll tasks to be performed by the reporting agent.
  - d. The means by which the Bidder will authorize the reporting agent to perform these tasks on behalf of the Bidder, which must be in accordance with IRS Revenue Procedure 2012-32.
14. Develop and maintain written policies, procedures, and internal controls for all tasks described in Section 3.

#### **4. Customer Service Requirements**

1. Bidder must offer and maintain a robust customer service system that provides, at minimum:
  - a. A toll-free phone number;
  - b. A TTY number;
  - c. A secure fax line;
  - d. A secure email system to communicate with participants;
  - e. Web-based information for participants, workers, and families;
  - f. Staff members able to respond to incoming calls during regular business hours, i.e., from 8:00 AM to 4:30 PM Eastern Time, Monday – Friday, excepting State of Delaware holidays listed here:  
<http://hrm.omb.delaware.gov/labor/holidays/index.shtml>
  - g. A voicemail system to track participant, family, and worker inquiries after hours, and capability to respond to all participant, family, and worker voicemail within two (2) business days.
  - h. Access to an emergency line available during regular business hours to assist participants and families with emergency needs (e.g., emergency respite). Callers must be able to speak with a live person during business hours via this emergency line.
  - i. A system to track all participant, family, and worker inquiries and concerns.
2. Develop and maintain a grievance procedure and provide participants and employees information about the grievance procedure upon enrollment.
3. Provide translation and interpreter services on an as-needed basis.

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4. Conduct an annual Participant Satisfaction Survey and report results to the State, and implement a Corrective Action Plan if required by the State.
5. Have documented policies, procedures, and internal controls for all tasks set forth in Section 4.

**5. Data Security Requirements**

1. Describe capabilities, including encryption methods, to store all participant Protected Health Information (PHI) in full compliance with the Health Insurance Portability and Accountability Act (HIPAA) and HITECH Act.
2. Describe capabilities to conduct all email-based correspondence with participants over secure email.
3. Describe physical safeguards in Bidder's office location that protect PHI from potential breach.
4. If Bidder's staff are able to access PHI via company-owned mobile devices, describe security measures in place on these devices to protect PHI from potential breach.
5. Have documented policies, procedures, and internal controls for all tasks set forth in Section 5.

**6. Business Continuity & Disaster Recovery Requirements**

Bidder must submit a Business Continuity Plan that includes disaster recovery procedures in the event of fire, flood, other natural disaster, or any other event that substantially impacts the Bidder's business operations. This Plan must include a security plan that protects program participants' Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in the event that the Bidder's normal business operations site is compromised.

The Plan must describe how the Bidder will continue performing the Work in the event that a disaster occurs. The Plan must include provisions for a back-up site at which the Bidder will continue performing business operations in the event the Bidder's usual business site is compromised or unusable.

**7. Estimated Participation**

Individuals Electing Self-Direction	# of persons SFY 2018	# of persons SFY 2019	# of persons SFY 2020	# of persons SFY 2021	# of persons SFY 2022
Total	300	310	341	357	413

**8. Vendor Payments**

In its proposal, the Bidder will propose:

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- a one-time startup fee for each participant for each participant who enrolls with the Agency with Choice Provider, and
- a monthly Per Member Per Month (PMPM) administrative fee for each active enrolled participant.

The monthly administrative fee will only be paid for months when payments for services or wages have been rendered on behalf of the enrolled participant.

In addition to providing a proposed one-time startup fee and a monthly administrative PMPM fee, the Bidder may propose another payment methodology for consideration by the State that will result in an efficient and economical payment.

The Division is seeking responses that propose monthly PMPM administrative fees below one hundred dollars (\$100.00) per participant per month.

### **9. Billing Requirements**

The Awarded Vendor must have a single bank account used to receive all payments received from the State of Delaware for provision of self-directed personal care and respite services.

Upon execution of a contract with DDDS, the Awarded Vendor shall enroll with the Delaware Medical Assistance Program (DMAP) as a Medicaid provider of personal care and respite services. The DDDS AWC contract shall constitute verification that the vendor meets the Medicaid enrollment criteria.

The Awarded Vendor shall submit HIPAA-standard electronic claims for personal care and respite services delivered to DDDS waiver members. The claim shall be no greater than the vendor's payment to the employee, inclusive of all taxes.

The Awarded Vendor shall bill the State a one-time startup fee for each participant who enrolls with the Agency with Choice model, as well as a monthly Per Member Per Month (PMPM) administrative fee for each active enrolled participant.

The Awarded Vendor shall only bill for the monthly maintenance fee for months when payments for services or wages have been rendered on behalf of the enrolled participant during the calendar month.

### **10. Electronic Case Record Requirement**

The Awarded Vendor shall provide Agency with Choice Financial Management Services for those individuals who choose to self-direct their personal care and respite services. The AWC Provider will be responsible for ensuring that services are delivered by qualified providers. The AWC Provider will be responsible for ensuring that all activities and services performed related to self-directed respite and personal care are documented in the

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specified DDDS electronic case record (ECR). Through access to the ECR, the AWC provider will be able to monitor the delivery and utilization of both personal care and respite services for each individual that elects to self-direct these services. DDDS will arrange for the Provider(s) to have access to this system. **There will be no cost to the vendor to use this ECR.**

The AWC Provider will be responsible for maintaining the portion of an individual's record relative to self-directed services for personal care and respite in the Division's electronic case record system. The electronic case record documents information that the AWC provider will need to maintain including but not limited to; the date the person enrolled with the AWC, type of service utilized (respite or personal care) date of service provision, number of units paid, name of service provider, whether or not the provider is a family member, guardian, or other service provider, what activities were completed under the deliverable service, and any issues or areas of concern.

In addition, the AWC Provider will be required to report to DDDS monthly on the following information including but not limited to; name of the person receiving services, corresponding MCI#, date enrolled with the Provider, county that the person lives in (address), type of service rendered (respite or personal care), type of caregiving entity used (self-directed caregiver, camp, day camp), name of the caregiver/entity, date service provided, number of units utilized, activities that occurred under the deliverable service, wage paid per unit to employee, balance available per person against maximum allotment, date any individual opts for voluntary termination of self-directed services, any providers that have been terminated and the reason for termination. The majority of the above information will be captured in the ECR and reports can be generated for submission to DDDS. In addition, the AWC Provider will need to provide an updated registry of all service providers including hours worked each week by each employee including any applicable travel time. The Provider will:

- a. Ensure that their designated responsible parties will have ready access to the individual's electronic case so that information can be entered and updated as needed.
- b. Maintain confidentiality policies and procedures for protecting individual records that are responsive to the HIPAA requirements for electronic and paper records per the following policies embedded as hyperlink:

DDDS HIPAA-PHI Accounting and Disclosure Procedures dated May 09, 2006  
<http://dhss.delaware.gov/ddds/files/accts.txt>

DDDS HIPAA Privacy Complaints Policy dated May 09,  
<http://dhss.delaware.gov/ddds/files/privcomp.pdf>

DDDS Confidentiality and Release of Information Policy dated February 10, 2012  
[http://dhss.delaware.gov/ddds/files/policy\\_admin\\_confidentiality\\_feb\\_2012.pdf](http://dhss.delaware.gov/ddds/files/policy_admin_confidentiality_feb_2012.pdf)



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Also, provide a proposed Consent for Release of Information form.

- c. Utilize secure encrypted email for any email communication regarding DDDS participants that contains the participant name or other protected health information as defined under HIPAA.
- d. Have documented policies, procedures, and internal controls for all tasks set forth in Section 8.

## **11. Reporting Requirements**

- 1. Provide regular utilization reports to participant and/or participant's representative on a monthly basis, showing the amount spent and the amount remaining in the authorization period.
- 2. Provide regular utilization reports to participant's Community Navigator on a monthly basis, showing the amount spent and the amount remaining in the authorization period.
- 3. Provide all information requested by the State of Delaware on a monthly basis, including but not necessarily limited to the following:
  - a. Name of each person receiving services;
  - b. MCI number;
  - c. Type of service rendered (i.e., respite or personal care);
  - d. Type of caregiving entity used (e.g., self-directed caregiver, camp, day camp, etc.);
  - e. Name of provider;
  - f. Date service provided;
  - g. Number of units utilized;
  - h. Activities that occurred under the deliverable service; ex. Assisted with bathing, meal preparation, etc.
  - i. Wage paid per unit to provider;
  - j. Balance available per person against maximum allotment;
  - k. Date any individual opts for voluntary termination of self-directed services;
  - l. Name and reason for termination for any providers/caregivers that have been terminated
- 4. Provide on a quarterly basis the following reports to the contract manager or designee:
  - a. Average time to return client calls; and
  - b. Average number of days from initial referral until the person starts receiving service.

## **12. Quality Assurance Requirements**

- 1. Implement and maintain a robust quality assurance and improvement system that incorporates quantitative measures for ongoing organizational improvement.

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2. Have at least one staff member with CPA (Certified Public Accountant) credentials, CPP (Certified Payroll Professional) credentials, or a bachelor's degree in accounting. A resume must be provided for each staff member with such credentials. A minimum of three years' industry experience in Financial Management Services or a closely related human services field may be used to substitute for these credentials.
3. Provide any information requested by the Division for purposes of a performance review conducted by the Division or by a DDDS-authorized entity.
4. Monitor indicators that a participant or participant's representative may need additional Managing Employer training (e.g., unusually high turnover of workforce, worker or participant/family complaints, etc.) and refer participant or participant's representative for follow-up training.
5. Have documented policies, procedures, and internal controls for all tasks set forth in Section 10.

**13. Subcontractor Requirements**

1. If the Bidder plans to subcontract any task(s) set forth above, they must complete Attachment 6.

**14. Financial Stability Requirements**

1. The awarded Vendor must submit DDDS a Full Financial Audit (as defined by Generally Accepted Auditing Standards) conducted by a public accounting firm or private CPA each year, unless an alternative financial audit reporting method has been approved by the Division in writing. The audit must be submitted within 6 months of the close of the agency's fiscal year. For agencies that have operations in multiple states, the audit must be specific to the Delaware operations and any related parent company expenses.

**15. Policy and Procedure Manual Requirements**

1. The awarded Vendor shall submit a Delaware-specific Agency with Choice Financial Management Services policy and procedure manual that includes policies, procedures, and internal controls. Bidders may submit examples for policy and procedure manuals from other similar contracts with their proposal.
2. The awarded Vendor must have a system of internal controls to assure optimum performance under the contract that controls risk and ensures operational effectiveness, reliable financial reporting, and compliance with all applicable laws, regulations, and policies. This must include, at minimum:
  - a. A clear hierarchical organizational structure;
  - b. Assignment of roles and responsibilities;
  - c. Review and approval authorizations;
  - d. Segregation of duties;
  - e. Checks and balances;
  - f. Safeguarding and accountability of assets;
  - g. Account reconciliation;
  - h. An internal auditing process;

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- i. Processes to prevent and detect fraud, waste, and abuse; and
- j. A process for addressing audit findings, including to whom they are reported within the organization.